IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1511 of 1991

Date of Decision: 23-6-2004

STATE OF GUJARAT

Versus

KASHMIRABEN RASIKLAL PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mrs.Manisha Lavkumar, Adv.

For the Respondent-1 Mr.R.S.Sanjanwala, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. This Appeal is directed against the Award of the Motor Accident Claims Tribunal-4, Ahmedabad, in Motor Accident Claims Petition No.183 of 1984, dated 26.6.1990.

#. The accident took place on 20.7.1984 at 6:40 p.m. at the northern end of Subhash Bridge, opposite Ghanshyamnagar, Vadaj-Sabarmati road, when Ms.Sushilaben (deceased), with niece Ms.Kashmiraben Rasiklal Patel (claimant) had gone for the temple at Sabarmati, Keshavnagar, and were going along the road from

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Whether reporters of Local Papers may be allowed to see the Judgment?

Ghanshyamnagar to Purshottamnagar. While crossing the road, the offending Van No.GAO-2119 came from the southern end of Subhash Bridge at a high speed driven rashly and negligently, intruding to the left side, dashed its front bumper with Sushilaben, as a result, she came under the front chassis between the front two wheels and died on the spot, while right front wheel ran over right thigh of Kashmiraben, whereby the claimant Kashmiraben suffered severe injuries on her right leg.

She was taken to hospital for treatment where she stayed as an indoor patient for about 28 days. Skin grafting was done on her right leg. Even then, it could not become normal as before. At the time of accident, she was 19 year old studying in 12th standard. Her father is an industrialist. So she wanted to have her own industry by installing manufacturing unit. That because of injury on the right leg, it became ugly, as such, her career has been affected. She incurred expenses on treatment, transportation, special diet, etc. In all, compensation of Rs.60,000/= was claimed.

New India Insurance Company has been deleted while other respondents resisted the claim. They have not denied the accident, but say that it was not caused due to the rash and negligent driving of the van. They say that the deceased and claimant were crossing the road carelessly and negligently, so they met with the accident. Vehicle was being driven carefully and brakes were applied when the claimant and deceased were seen crossing the road, still the accident could not be avoided. Consequently, the claimant and deceased are liable for contributory negligence, no compensation is payable, petition liable to be rejected.

#. After framing issues on the pleadings of parties, seeking evidence and hearing them, conclusion drawn is that the accident took place as alleged, therefore, compensation of Rs.28,800/= is awarded with interest at the rate of 9 per cent per annum from the date of petition till realization within three months from the date of Award failing which, to carry interest at the rate of 12 per cent per annum.

#. The appellants are not satisfied with this Award, therefore, it has been challenged through this Appeal.

We have been taken through evidence by

Mrs.Manisha Lavkumar, learned Assistant Government Pleader, in support of her submissions that the Award is liable to be set aside since the findings of the Claims Tribunal are not rested on evidence. The claimant was negligent in crossing the road, therefore accident took place, otherwise, there was no negligence by driver of van which was being driven carefully. Other submission is that compensation for injuries sustained is excessive, therefore, it be reduced.

#. The evidence has been considered carefully and thoroughly with a view to test whether the findings recorded by the Claims Tribunal can be sustained or not. In our considered opinion, it is clear from the evidence that van was being driven rashly and negligently at a high speed on the bridge. The driver should have been careful in driving the vehicle and avoided the accident. The contention that driver applied brakes but could not avoid the accident cannot be accepted. Rather, it goes to show that speed was excessive to the extent that even application of brakes could not stop the vehicle. It is quite common that pedestrians are on the road and they are likely to cross road on occasions to reach the destination, therefore, high responsibility is cast on the driver of vehicle to be careful on such ways and avoid accident by driving vehicle at "dead slow" speed. Had the driver of van done so in this case, accident could have been avoided. There is enough evidence to show that it was the driver of van who is responsible for causing the accident and claimant and deceased did not contribute in that. Consequently, the findings recorded by the Claims Tribunal are sustainable and are confirmed. Similarly, looking to the nature of injuries, the age of claimant, after effects, duration of treatment, expenditure on treatment, effect on future, this extent of compensation cannot be considered to be excessive.

#. Consequently, we find no merit in this Appeal and the same is dismissed. No order as to cost.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE
(sunil)